

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LINCOLN GENERAL INSURANCE COMPANY,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-05-3923
	§	
RAIN GUARD INC./GRACE DIRECTIONAL, INC. d/b/a ACCU-BORING, <i>et al.</i> ,	§	
Defendants.	§	

MEMORANDUM AND ORDER

Plaintiff Lincoln General Insurance Company (“Lincoln General”) filed a Motion for Summary Judgment [Doc. # 13], and Defendant Southwestern Bell Telephone, L.P. d/b/a SBC Southwest (“SWBT”) filed a Motion for Partial Summary Judgment [Doc. # 12]. At a hearing on the pending motions, Lincoln General recognized that it had a duty to defend its insured, Accu-Boring, in the underlying state court lawsuit filed by Mr. and Mrs. Perez. As a result, the duty to defend issue is moot.

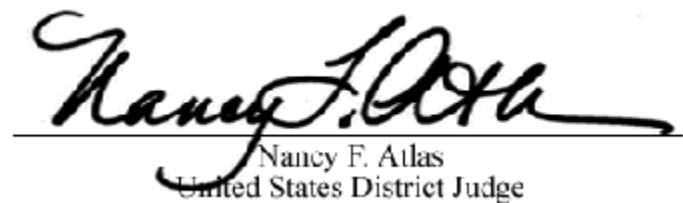
Generally, Texas law considers the duty-to-indemnify question to be justiciable only after the underlying suit is concluded, unless there is no duty to defend and “the same reasons that negate the duty to defend likewise negate any possibility the insurer will ever have a duty to indemnify.” *Farmers Tex. County Mut. Ins. Co. v. Griffin*, 955

S.W.2d 81, 84 (Tex. 1997). In this case, it is undisputed that Lincoln General has a duty to defend Accu-Boring in the underlying lawsuit and, therefore, the exception described in *Griffin* does not apply. Because the duty to defend issue is moot and the duty to indemnify issue is not yet justiciable, it is hereby

ORDERED that this case is **STAYED AND ADMINISTRATIVELY CLOSED** until the conclusion of the underlying state court lawsuit. Any party may file a written motion to reinstate this case on the Court's active docket after the state court litigation is concluded. It is further

ORDERED that the parties shall file a written report setting forth the status of the underlying lawsuit every ninety (90) days beginning **August 1, 2006**.

SIGNED at Houston, Texas, this **25th** day of **April, 2006**.



Nancy F. Atlas
Nancy F. Atlas
United States District Judge